IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2220 OF 2006

GURUSWARUP SRIVASTAVA .. PETITIONER

Versus

STATE OF MAHARASHTRA & ORS. .. RESPONDENTS

Mr. A.P. Mundargi with U.P. Warunjikar & D. M. Galani for petitioner

Ms. Rajeshree Gadhvi, APP

Mr. B.A. Desai, Addl. Solicitor General with A.S. Pai - Addl. APP for R-2

Mr. Mahesh Jethmalani with Pranav Badheka for R-3.

CORAM:-SMT. RANJANA DESAI, J.

DATED:-19/12/2006

P.C.

. In this petition the petitioner has prayed that actions of respondent 2 Central Bureau of Investigation in treating letter dated 21/9/06 addressed by Mr. M. V. Hardas of respondent 3 National Agriculture Co-operative Marketing Federation of India Ltd. ("NAFED" for short) as an FIR within the meaning of Section 154 of the

Criminal Procedure Code ("Code" for short) be quashed and the further criminal prosecution registered by respondent 2 in pursuance of the said letter be also quashed.

2. Respondent 3 NAFED is a national level cooperative society under Multi State Co-operative Societies Act, (2002) having its registered office at New Delhi. Its main object is to promote cooperative marketing of agricultural and non-agricultural products through domestic commercial operations and international trade, besides functioning as the nodal agency of the Government of India in Price Support Operation and Market Intervention Scheme (MIS). The petitioner is the sole proprietor of M/s. Swarup Group of Industries ("SGI" for short) having its place of business at Andheri, Mumbai.

3. The case of NAFED as evident from its complaint may have to be shortly stated. According to NAFED it had agreed to extend credit facilities to SGI for carrying out export business of Iron Ore. On 26/3/04 a Memorandum of Understanding ("MOU" for short) was signed between NAFED and SGI for export of 40,000 Metric Tonnes of Iron Ore. Accordingly

on different dates an amount of Rs.11,65,41,500/- was released in favour of SGI through cheques. This MOU was entered into after NAFED received a proposal for strategic alliance in export of Iron Ore to China from SGI signed as proprietor and authorised signatory by Shri G.S. Srivastava, who is the petitioner herein. It is the case of the NAFED that SGI vide their letter dated 28/4/04 informed that yet another contract with the same buyer i.e. M/s. RUL, China for export of 60,000 MTs of Iron Ore was entered into by them and requested to extend the earlier MOU on the existing terms and conditions. An MOU dated 24/4/04 came into existence by virtue of signature made thereon by Shri Homi Rajvansh, who was functioning as Divisional Head of Finance & Accounts and Tie up Business in NAFED. The MOU indicated the same terms and conditions as of the MOU dated 26/3/04 except that no quantitative or value restrictions were indicated. It is the case of NAFED that this MOU was signed without any approval of the competent authority in NAFED. On various dates funds were released to SGI as per the MOU. According to NAFED as per the MOU dated 24/4/04 SGI was to procure Iron Ore in the name of NAFED but SGI has not so far provided any bills in favour of

NAFED excepting for one bill for purchase of 42,379 MTs of Iron Ore valuing 6.40 crores from M/s. Sonu International. As per paragraph 7 of this MOU SGI were to transfer all the letters of credit in favour of NAFED but in fact SGI transferred only four Letters of Credit.

4. It is the case of NAFED that in respect of Invoice No.004/15.7.2004, of 22909 MTs for Rs.5.79 crores, no payment has been received by NAFED from SGI. According to NAFED a sum of Rs.86.06 has been received by NAFED either from exports proceeds or otherwise. However, the balance of Rs.149.50 Crores toward principal amount is still outstanding and it is suspected that this amount has been diverted by SGI for investment in property or movable assets like painting and financing the events like Film Fare Award and Femina Miss India Contest.

5. It is further the case of NAFED that payment of invoice No. 1100935 has not been received. It is further the case of NAFED that total bills negotiated towards export of Iron Ore are of the order of Rs.45,96 crores which again indicates that the export for a quantity for the balance funds

advanced by NAFED has been either made in the name of SGI or no further exports were made. Therefore, export realization received, if any, has been diverted by SGI rather than paying to NAFED. It is the case of NAFED that SGI has instead of transferring the LCs in favour of NAFED, resorted to exports on their own and they did not remit the proceeds to NAFED who rendered the financial assistance to them. This according to NAFED amounts to cheating. According to NAFED by adopting this method, SGI and its proprietor, the present petitioner entered into criminal conspiracy with Shri Rajvansh, the Managing Director NAFED for obtaining funds purportedly for exports of Iron Ore with a criminal intention to cheat NAFED. According to NAFED the said funds were subsequently misappropriated for purposes other than that for which they were advanced, thereby causing wrongful loss to the tune of Rs.149.50 crores approximately to NAFED. It is this complaint and the proceedings initiated pursuant to this action which are sought to be quashed by the petitioner.

6. I have heard Mr. Mundargi, the learned counsel for the petitioner at considerable length. Mr. Mundargi submitted that the instant complaint does

not make out any offence at all much less offence under Section 420 of the Indian Penal Code. Drawing my attention to certain subsequent documents Mr. Mundargi contended that knowledge and consent of NAFED to the two MOUs mentioned hereinabove is reflected in the said documents. He submitted that the impugned proceedings deserve to be quashed because they are obliquely motivated. Proceedings are not bonafide and are initiated at the instance of the present Chairman of NAFED.

7. He particularly drew my attention to the complaint dated 19/12/05 submitted by the petitioner to the police complaining about the high handed behaviour of Mr. Ajit Kumar Singh, who is the present Chairman of NAFED and others. He submitted that this complaint clearly indicates the oblique motive of the present Chairman in falsely implicating the petitioner. Mr. Mundargi made a grievance that the police have not looked into this complaint. Mr. Mundargi then drew my attention to a certificate issued by Senior Inspector of Police of Oshiwara Police Station certifying that SGI has taken 190 crores from NAFED and that, SGI has not cleared the work as per the agreement between SGI and NAFED. He pointed out that there was no

occasion for the police to give such a certificate and in fact in a writ petition filed by the present petitioner this Court has stayed the said certificate. The learned counsel urged that nothing more is required to establish the case of the petitioner that this is not a bonafide complaint. It is a motivated complaint falsely implicating the petitioner.

8. Mr. Jethmalani and Mr. Desai, the learned counsel for the respondents on the other hand submitted that no interference is necessary with the impugned proceedings.

9. I have given anxious consideration to the submissions advanced by the learned counsel. In my opinion, this is not a case where it can be said that the complaint does not disclose any offence at all. The complaint states all the details of both the MOUs entered into by SGI with NAFED. It makes reference to the credit facility made available to the SGI. After giving the necessary details the complaint goes on to say that an amount of Rs.149 crores is outstanding from SGI to NAFED. The submission that the officials of NAFED are also involved in this case and that it is with their

consent and knowledge that these MOUs have been entered into and that present petitioner is not guilty cannot be decided at this stage particularly in a case of this type. For that obviously evidence will have to be led. While considering whether the complaint should be quashed or not this court cannot at this stage decide whether conviction will in fact come or not.

10. It is well settled that the complaint can be quashed only if allegations made in the complaint even if they are taken at their face value do not make out any offence at all. Such is not the case here. Needless to say that if any officers of NAFED are involved in this case, the law will obviously take care of that. If the complaint is obliquely motivated and not bonafide as alleged by Mr. Mundargi, that will also come to light at the appropriate stage, if it is true. But this is certainly not a case where complaint can be quashed. I find no merit in the petition. Petition is dismissed.

11. Mr. Mundargi at this stage prays that investigating agency should be directed not to take coercive steps for a few days. Prayer is rejected.

JUDGE.